

MAINE FAMILY LAW ADVISORY COMMISSION

Report to Maine Legislature Joint Standing Committee on Judiciary On LD 222 “An Act to Update the Maine Parentage Act”

Introduction

The Maine Family Law Advisory Commission (the “Commission” or “FLAC”) hereby reports to the Maine Legislature, Joint Standing Committee on Judiciary, on LD 222, “An Act to Update the Maine Parentage Act.” Previously, FLAC drafted text for this bill, though it did not introduce or originate this LD. For the reasons set forth below, FLAC supports this bill.

History

The Maine Parentage Act (MPA)¹ was enacted in 2015 and took effect in July of 2016. Pursuant to a Resolve,² FLAC had been directed by the Judiciary Committee to study the Uniform Parentage Act of 2002, the version in effect at the time, with a view to developing possible legislation for Maine. As directed, FLAC studied the Uniform Parentage Act, then drafted and proposed the MPA.³

The Uniform Parentage Act was created by the Uniform Law Commission, a non-partisan organization established in 1892 that prepares model legislation for states to consider in order to promote uniformity, clarity, and stability in critical areas of state law across the country. Following enactment of the MPA, the Uniform Law Commission issued a revised version of the Uniform Parentage Act in 2017 that incorporated some of the MPA’s concepts and added new provisions not found in the MPA. In 2019, Rep. Barbara Cardone introduced LD 1291, the precursor to LD 222, as a concept bill so that certain portions of the revised Uniform Parentage Act of 2017 could be considered for potential adoption in Maine.

Additionally, in late 2018, one of Maine's commissioners on the Uniform Law Commission had asked FLAC to review the new Uniform Parentage Act of 2017, and, in particular, to study the section regarding “voluntary acknowledgment.” The administrative mechanism called voluntary acknowledgment of *paternity* is already part of Maine law, but the new version of the Uniform Parentage Act expands acknowledgment to be broader; it is an acknowledgment of

¹ The Maine Parentage Act is Chapter 61 of Title 19-A at sections 1831–1939.

² Resolve 2014, c. 83 of the 126th Legislature (extending Resolve 2013, c. 12, § 12).

³ At that time, only minor changes were made to the procedure for voluntary acknowledgment of paternity in Maine (Subchapter 3 of the MPA) due to concerns that amendments similar to those proposed in LD 222 might impede compliance with federal child support regulations. Now it is FLAC’s understanding that, after consulting with federal officials and other states, the Maine Department of Health and Human Services (“DHHS”) was assured that the amendments proposed in LD 222 do not present any problem with federal compliance.

parentage. The change ensures that more people would have access to this simple, administrative route to establishing parentage and could avoid the expense and delay of obtaining a court order.

In response to the request, a working group of FLAC reviewed certain portions of the 2017 Uniform Parentage Act. FLAC drafted proposed amendments to the MPA to expand the mechanism of voluntary acknowledgment to *parentage* in Maine law. FLAC agrees that Subchapter 3 of the MPA, 19-A M.R.S. §§ 1861-1873, which sets forth the administrative procedure known as “voluntary acknowledgment,” should be broader and not limited to biological fathers who elect to assert their paternity. Rather, the acknowledgment process should be available to more persons who have parentage rights under the MPA. By agreement of the sponsor, the statutory amendments drafted by FLAC were introduced as LD 1291 in the last session. The same bill is now presented as LD 222.

Background

An "acknowledgment" is done on a voluntary basis by using the form available from the Maine DHHS (see copy attached) that can be submitted at the hospital, a town hall, or DHHS to establish that the person is a legal parent of a child. The mother who gave birth to the child must also sign the form. This form serves as an official acknowledgment that the parents are legally responsible to support the child until at least the age of 18. It is a simple, inexpensive procedure that, in certain circumstances, can be used instead of going to court and seeking a court order.

This administrative mechanism has been part of Maine law for many years. It is equivalent to adjudication by a court and is recognized in all states. At present, however, the acknowledgment form can be submitted in Maine only by a man who wishes to establish paternity and state under oath that he is the biological father. FLAC believes it is in the interest of children and families to make this administrative route for establishing legal parentage accessible to more parents.

Further, the 2017 version of the Uniform Parentage Act added a new section that is not part of Maine law. This would assist children conceived with the aid of assisted reproduction technology to obtain information about their donors. LD 222 would add this new section to the MPA as Subsection 9.

Discussion

1. Amendments to Subchapter 3 of the MPA

LD 222 includes amendments to Subchapter 3 on “voluntary acknowledgment,” which is one way to establish legal parentage in Maine under current law.⁴ As noted, these amendments reflect changes made in the Uniform Parentage Act of 2017. The goal of amending Subchapter 3 is to help children and families by making it easier for more parents to establish that they are the legal parents with parental rights and responsibilities. The voluntary acknowledgment administrative procedure already exists in Maine, as well as all other states, because it is required

⁴ The MPA sets forth eight ways to establish legal parentage: birth, adoption, acknowledgment, presumption, de facto parentage, genetic parentage, assisted reproduction, and gestational carrier agreements. See 19-A M.R.S. § 1851.

by federal law to facilitate collection of child support. It is a relatively straightforward procedure that should be available to more parents, including mothers and fathers, to establish that they are the legal parents of a child.

The proposed amendments to Subchapter 3 of the MPA would allow certain other parents to submit the acknowledgment form voluntarily to as a way to establish parentage (without having to go to court). The form could still be used by men to declare that they are the biological fathers, but the acknowledgment procedure would be opened up to certain other parents as well.⁵

If LD 222 is passed, the administrative mechanism of “voluntary acknowledgment” overseen by DHHS would be available to formally confirm the legal parentage of:

- (1) a genetic parent of the child (not just the genetic *father*);
- (2) a "presumed" parent of a child (an unmarried partner or spouse of the parent who gave birth); and
- (3) parents who use assisted reproduction technology to get pregnant and create a family.

Importantly, the proposed amendments in LD 222 would not change or expand the scope of legal parentage under Maine law. That is already determined by the MPA.

2. New Subchapter 9

The amendments to the MPA proposed in LD 222 would also add a new Subchapter 9 to the MPA titled “Information about Donor.” This is a new section that was added to the Uniform Parentage Act of 2017.

The proposed Subchapter 9 would require fertility clinics or gamete banks operating in Maine to collect and maintain information about donors, as well as information about fertility clinics or gamete banks when gametes⁶ used here were collected outside of Maine. However, the requirement would not apply to people who are providing gametes for a spouse or have a written agreement to be a parent of the resulting child with the person who gives birth to the child. *See* 19-A M.R.S. § 1922(2).

The information would include a donor’s name, date of birth, address, and medical history, as well as the identity of the gamete bank or fertility clinic if gametes were received from out of state. The donor could choose whether the donor’s identity can be disclosed to a child conceived by assisted reproduction with the donor’s gametes once the child turns 18 years of age.

⁵ The language on the form used now for voluntary acknowledgment of paternity would need to be revised if LD 222 is passed and the statute is amended.

⁶ A “gamete” is a “cell containing a haploid complement of deoxyribonucleic acid that has the potential to form an embryo when combined with another gamete.” A “gamete” includes sperm, eggs, and “[d]eoxyribonucleic acid from one human being combined with the cytoplasm . . . of another human being.” 19-A M.R.S. § 1832(7).

The proposed new Subchapter 9 would also require that fertility clinics or gamete banks operating in Maine make a good faith effort to provide the information upon request of a child conceived by assisted reproduction once the child attains the age of 18.

FLAC endorses the requirement that fertility clinics operating in Maine must collect and maintain information about donors, including their medical histories, as well as the origin of gametes supplied by fertility clinics or gamete banks outside of Maine.

Finally, by passing these amendments, Maine will move toward greater consistency and uniformity in family law with other states. Given how frequently families move from state to state, it is helpful to have commonalities in family law.

Conclusion

For the reasons set forth above, FLAC supports passage of LD 222.

Dated: February 12, 2021

Respectfully submitted,
Maine Family Law Advisory Commission

Hon. E. Mary Kelly, District Court Judge (Chair)
Hon. Wayne Douglas, Superior Court Justice
Hon. Steven Chandler, Family Law Magistrate
Hon. Libby Mitchell, Probate Court Judge
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Attachment: Current Maine Form for Voluntary Acknowledgment of Paternity